

# **EXHIBIT A**

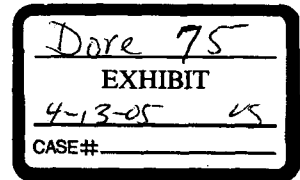
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4-10-03

**MILLIS PLUMBING CO., INC.**

Mechanical Contractors

April 9, 2003

Phone ( 508) 668-1040 • FAX (508) 668-1998  
220 Norfolk Street, Walpole, MA 02081**DEMAND FOR DIRECT PERIODIC PAYMENT**Town Of North Brookfield  
Office of the Superintendent of Schools  
10 New School Drive  
North Brookfield, MA 01535Project: North Brookfield Jr/Sr High  
Subtrade: Plumbing  
General Contractor: EJ Sciaba Contracting

Gentlemen:

The undersigned submitted requests for periodic payments to the General Contractor totaling \$87,118.23, representing the amount due for labor and materials to date. The General Contractor paid \$55,612.38, leaving a balance due of \$31,505.85. which the General Contractor failed to pay. This is written notice to you of our failure to receive such payment, a breakdown of which is as follows:

Date of Requisition	Amount of Requisition	Date of Payment From Gen. Contr.	Amount of Payment From Gen. Contractor
Sept. 17, 2002	\$ 7,543.00	Nov. 12, 2002	\$ 7,543.00
Oct. 18, 2002	\$ 31,231.25	Dec. 19, 2002	\$ 31,231.25
Nov. 21, 2002	\$ 15,461.25	Feb. 10, 2003	\$ 15,461.25
Jan. 22, 2003	\$ 3,052.30	Feb. 28, 2003	\$ 1,376.88
Feb. 24, 2003	\$ 10,670.40		
Mar. 20, 2003	\$ 19,160.03		

Periodic Payment Due

\$ 31,505.85

Please make direct payment to us of \$31,505.85, the periodic payment due, in accordance with Chapter 30, Section 39F of the General Laws.

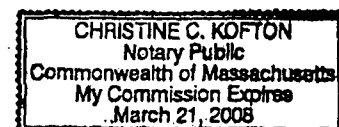
**MILLIS PLUMBING CO., INC.**By   
President

Michael D. Rogers personally appeared before me at 220 Norfolk Street on April 9, 2003 and made oath that the above statements are true and that he mailed a signed copy of this letter by certified mail to the General Contractor named above on the date he mailed to original to the Awarding Authority.

Christine C. Kofton

My Commission Expires: 3/21/08

cc: General Contractor Certified Mail # 7001 2510 0002 8984 9165



## **EXHIBIT B**

Lee P. Dore

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1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS: CENTRAL DIVISION  
3

4 AMERICAN MANUFACTURERS \*

5 MUTUAL INSURANCE COMPANY \*

\*

6 vs. \* CASE NO. 03-40266 CBS

\*

7 TOWN OF NORTH BROOKFIELD \*

8 D E P O S I T I O N

9 OF

10 LEE P. DORE

11 Taken on behalf of the Plaintiff on Wednesday  
12 April 13, 2005 at the offices of  
13 Dore and Whittier, So. Burlington, Vermont.

14 APPEARANCES:

15 DEBORAH S. GRIFFIN, ESQ., of the firm Holland &  
16 Knight, 10 St. James Avenue, 11th Floor, Boston,  
17 MA 02116, appeared and represented the Plaintiff.  
18 THOMAS W. MCENANEY, ESQ., of the firm Kopelman and  
19 Paige, P.C., 31 St. James Avenue, Boston, MA  
20 02116, appeared and represented the Defendant.  
21 MATTHEW M. O'LEARY, ESQ., of the firm Donovan  
22 Hatem LLP, World Trade Center East, Two Seaport  
23 Lane, Boston, MA 02210, appeared and represented  
24 the Deponent.  
25

26 COURT REPORTER: Virginia L. Simmer, RPR

Lee P. Dore

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<p style="text-align: right;">Page 6</p> <p>1 (Commencing at approximately 9:07 a.m.)</p> <p>2 LEE P. DORE: Being first duly sworn by a Notary</p> <p>3 Public to tell the truth, deposes</p> <p>4 and says as follows:</p> <p>5 MS. GRIFFIN: The only stipulation is</p> <p>6 that we would waive notarization of the</p> <p>7 signature so the witness can read and sign</p> <p>8 but it need not be before a notary.</p> <p>9 MR. O'LEARY: Okay. We appreciate</p> <p>10 that.</p> <p>11 EXAMINATION BY MS. GRIFFIN</p> <p>12 Q. Would you state your name, please?</p> <p>13 A. Lee P. Dore.</p> <p>14 Q. Where do you live?</p> <p>15 A. Charlotte, Vermont.</p> <p>16 Q. And you're employed by Dore and Whittier?</p> <p>17 A. Yes.</p> <p>18 Q. What's your position currently with Dore and</p> <p>19 Whittier?</p> <p>20 A. Project manager.</p> <p>21 Q. How long have you been with Dore and Whittier?</p> <p>22 A. Ten years.</p> <p>23 Q. And have you held other positions besides</p> <p>24 project manager?</p> <p>25 A. I did. I worked in the marketing department</p> <p>for about four years and then I worked as an</p>	<p style="text-align: right;">Page 8</p> <p>1 role?</p> <p>2 A. I was the project manager for Dore and</p> <p>3 Whittier.</p> <p>4 Q. Were you the project manager from the very</p> <p>5 beginning of Dore and Whittier's involvement in the</p> <p>6 project?</p> <p>7 A. Yes.</p> <p>8 Q. And could you just describe generally what the</p> <p>9 responsibilities were that you had as project</p> <p>10 manager?</p> <p>11 A. Generally speaking I'm the liaison between the</p> <p>12 design team consultants and the owner through the</p> <p>13 design phases of the project, and during bidding and</p> <p>14 construction I continue that same role and also</p> <p>15 coordinate with our on-site construction manager.</p> <p>16 Q. And in this instance the on-site construction</p> <p>17 manager was whom?</p> <p>18 A. Chris Conway.</p> <p>19 Q. I've put before you two exhibits that have</p> <p>20 been marked Exhibits 1 and 2. Exhibit 1 was a</p> <p>21 document subpoena that was served on Dore and</p> <p>22 Whittier last summer, have you seen it before?</p> <p>23 A. Yes.</p> <p>24 Q. Did you participate in gathering documents</p> <p>25 that were responsive to the subpoena?</p>
<p style="text-align: right;">Page 7</p> <p>1 assistant project manager for a year.</p> <p>2 Q. So you've been a project manager for about</p> <p>3 five years?</p> <p>4 A. Yeah.</p> <p>5 Q. Would you give your educational background,</p> <p>6 please?</p> <p>7 A. Sure. After high school graduation I attended</p> <p>8 University of Vermont from 1989 to 1994 civil</p> <p>9 engineering.</p> <p>10 Q. Did you earn a degree?</p> <p>11 A. No.</p> <p>12 Q. Have you earned any degrees since completing</p> <p>13 your work at University of Vermont?</p> <p>14 A. No.</p> <p>15 Q. Do you hold any professional licenses or</p> <p>16 certifications?</p> <p>17 A. I'm an associate member of American Institute</p> <p>18 of Architects and member of Construction</p> <p>19 Specifications Institute.</p> <p>20 Q. Have you held any jobs in the construction or</p> <p>21 architecture or engineering fields prior to</p> <p>22 beginning at Dore and Whittier?</p> <p>23 A. No.</p> <p>24 Q. With regard to the North Brookfield project</p> <p>25 which is the subject of this suit what was your</p>	<p style="text-align: right;">Page 9</p> <p>1 A. In a very minor role. It was mostly handled</p> <p>2 by our administrative staff.</p> <p>3 Q. And what was your role?</p> <p>4 A. I just helped collate all of the contractual</p> <p>5 files that they weren't able to get to.</p> <p>6 Q. Other than administrative staff were any of</p> <p>7 the professional staff of Dore and Whittier involved</p> <p>8 besides yourself?</p> <p>9 A. No.</p> <p>10 Q. Exhibit 2 is the subpoena for this deposition</p> <p>11 which was served on Dore and Whittier and required</p> <p>12 Dore and Whittier to designate a witness to testify</p> <p>13 to the subjects that are on the attached Schedule</p> <p>14 A. Have you seen Exhibit 2 before?</p> <p>15 A. Yes, I have.</p> <p>16 Q. And have you been designated by Dore and</p> <p>17 Whittier to testify on all the subjects on Exhibit</p> <p>18 A?</p> <p>19 A. Yes, I have.</p> <p>20 Q. Could you tell me what you did to prepare for</p> <p>21 today's testimony?</p> <p>22 A. Nothing in great detail. You know, I reviewed</p> <p>23 this exhibit just to make sure that I was aware of</p> <p>24 all of the scope of items that you may be asking.</p> <p>25 Q. Did you confer with any other Dore and</p>

3 (Pages 6 to 9)

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1 myself or Harald depending who was down there  
 2 reviewed with them at the site and it would be  
 3 marked up on stuff that we disagreed with and then  
 4 Sciaba would send to Vermont, this office, a formal  
 5 copy which we would then when we would get it,  
 6 either myself or Harald would review it with Chris  
 7 Conway and compare it to the pencil requisition to  
 8 make sure that the changes were made, and if they  
 9 weren't made then we would make them. And then we  
 10 would pass it to Al Russell or in some instances  
 11 Richard Ziemba would then sign which they would then  
 12 question us as to and review the pencil requisition  
 13 and the final requisition before certifying it.

14 Q. The pencil requisition was literally in  
 15 pencil?

16 A. No, it's a term just as a draft copy and it  
 17 would be basically this not formalized, notarized or  
 18 signed.

19 Q. But it would still be typed, right?

20 A. Yes.

21 Q. And was the -- the handwritten changes on the  
 22 first page of Exhibit 68, do you know were those  
 23 changes made because changes that were supposed to  
 24 have been made from the pencil requisition to the  
 25 formal submission had not been made or were there

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1 other reasons for those changes?

2 A. I'm not specifically sure why these were made  
 3 for this specific application. In some instances as  
 4 you described and in other instances it's because of  
 5 the lag time between when we review the pencil copy  
 6 versus the formal. Some submittals were supposed to  
 7 be included, updated project schedules, project  
 8 photographs and if those didn't come with the final  
 9 requisition and they were billing for them, then we  
 10 would also have to mark these down.

11 Q. The through date for the period covered by  
 12 requisition 11 was February 28, 2003, right?

13 A. Correct.

14 Q. And typically when in relation to that through  
 15 date did you have the meeting to go over the pencil  
 16 requisition?

17 A. Usually it would be by the 25th of the month.

18 Q. So February 25th for the requisition that was  
 19 about to cover -- that was going to cover the period  
 20 about to end?

21 A. Right.

22 Q. In conducting your review of the requisition  
 23 after it was submitted formally and signed by Sciaba  
 24 did you make use of any additional information about  
 25 events that happened between the time you reviewed

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1 the pencil requisition and the time the formal  
 2 requisition came in?

3 A. Yes, if at the pencil requisition we would  
 4 question material deliveries, for instance, if they  
 5 weren't there yet and Sciaba would inform us that  
 6 they would be coming prior to the submission of the  
 7 formal, we would check to verify that, indeed, they  
 8 did come or if they were stored off-site did we have  
 9 the paperwork, insurance certificates, et cetera  
 10 that they had actually come in.

11 Q. And you would check with Chris Conway about  
 12 that?

13 A. Yes.

14 MS. GRIFFIN: Mark this next bundle as  
 15 69.

16 BY MR. GRIFFIN

17 Q. Can you identify Exhibit 69, please?

18 A. This is a memo from Harald Aksdal to Robert  
 19 O'Neill regarding application for payment No. 11.

20 Q. Are the pages behind it additional materials  
 21 that Sciaba submitted in support of requisition 11?

22 A. I don't recall specifically if they were in  
 23 support of application No. 11.

24 Q. At the bottom of some of the pages there's a  
 25 fax header March 7, '03 Sciaba, can you tell whether

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1 that records a fax transmission to either you or  
 2 Chris Conway?

3 A. It could be to one of us.

4 Q. Could you see if you can identify Exhibit 70,  
 5 please?

6 A. Yes, I can. It's application for payment No.  
 7 12.

8 Q. And it's got the same signatures on the  
 9 right-hand side that we referred to before, Scott  
 10 Finneran and Mr. Russell?

11 A. Yes, it does.

12 Q. At the bottom right-hand corner it says,  
 13 Recommend providing separate checks to Millis and  
 14 Greenwood, see attached memo. Is the memo that's  
 15 referred to there the one that is the third page on  
 16 Exhibit 70?

17 A. Bates No. 25494, yes.

18 Q. Did you have a role in formulating that  
 19 recommendation and particularly the dollar amounts  
 20 stated for payments to Millis Plumbing and Greenwood  
 21 Industries on page 25494?

22 A. I don't recall specifically. I do recall  
 23 conversations regarding direct payment requests.

24 Q. Who did you have the conversations with?

25 A. Harald and Chris Conway.

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1 Q. Anyone else?  
 2 A. Maybe, I don't recall specifically.  
 3 Q. Did you have any communication with the  
 4 attorney for the town regarding the request for  
 5 direct payment?  
 6 MR. MCENANEY: Objection.  
 7 A. I may have.  
 8 Q. Do you recall if you did or not?  
 9 A. I don't recall.  
 10 Q. Did you -- at the time you were reviewing  
 11 Millis Plumbing's request for direct payment did you  
 12 identify any items of unsatisfactory work by Millis  
 13 Plumbing that called for a holdback from them in  
 14 excess of their retainage?  
 15 A. I do believe that some of the amounts that  
 16 Millis and Greenwood had requisitioned for were not  
 17 certified by us as being complete. In other words,  
 18 they were not incorporated into the application for  
 19 payment.  
 20 Q. Are you saying they weren't certified as of  
 21 the time of the application for payment that they  
 22 followed or that they weren't certified as of the  
 23 time you were making a recommendation about what to  
 24 pay?  
 25 A. They weren't certified within that last period

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1 of application for payment.  
 2 Q. Last period before what?  
 3 A. The next application for payment.  
 4 Q. I'm going to show you what's been marked as  
 5 Exhibit 71. Can you identify Exhibit 71 as another  
 6 copy of the face page of application 12?  
 7 A. Yes, I can.  
 8 Q. This one has a handwritten note about 2 inches  
 9 down from the top of the page. Whose handwriting is  
 10 that?  
 11 A. I don't know specifically whose it is. It's  
 12 either Chris Conway maybe or Harald Aksdal. I'm not  
 13 sure.  
 14 Q. Do you have any information about who it was  
 15 that handed a check for this requisition to Mike  
 16 Sheehan on May 21, 2003?  
 17 A. It usually would be Chris Conway that would  
 18 deliver that if it was handed out directly on site.  
 19 Q. Did Dore and Whittier have a check payable to  
 20 Sciaba for the amounts reflected in Exhibit 70 or  
 21 71, that is application 12, did it have that check  
 22 at the time of the meeting with Sciaba and the  
 23 Kemper Surety people on May 21?  
 24 A. I believe so.  
 25 Q. Was it stated to the Kemper Surety people that

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1 Dore and Whittier had the check and was ready to  
 2 deliver it?  
 3 A. I don't recall that being stated specifically.  
 4 Q. Do you know whether the check was delivered  
 5 after the meeting broke up?  
 6 A. I believe it was.  
 7 Q. And nobody from Kemper Surety was there when  
 8 the check was delivered, were they?  
 9 A. I wasn't there either when that happened so I  
 10 couldn't tell you who was there.  
 11 Q. Take a look at Exhibit 72. Can you identify  
 12 Exhibit 72, please?  
 13 A. This is application for payment 13B.  
 14 Q. And it was signed by someone on behalf of  
 15 Sciaba, right?  
 16 A. Yes.  
 17 Q. And Mr. Russell signed on behalf of the  
 18 architect, correct?  
 19 A. Yes.  
 20 Q. Let me show you what's been marked as Exhibit  
 21 73. Can you identify Exhibit 73 as another copy of  
 22 the face page of application 13B?  
 23 A. Yes.  
 24 Q. And on this copy there's a note at the top of  
 25 the page, EJS REC. payment check for this month on

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1 5/27/03 (hand delivered to Matt Daley), did I read  
 2 that correctly?  
 3 A. Yes, you did.  
 4 Q. Whose handwriting is that?  
 5 A. I don't recall specifically. Similar to the  
 6 one on the previous exhibit you showed to me.  
 7 Q. Do you know who delivered a payment for  
 8 application 13B to Sciaba?  
 9 A. I believe it was Chris Conway.  
 10 Q. Have you had any conversation with Chris  
 11 Conway about the delivery of checks to Sciaba for  
 12 applications 12 and 13B?  
 13 A. Nothing I can remember specifically.  
 14 Q. Have you discussed with anybody else the  
 15 delivery of checks to Sciaba for applications 12 and  
 16 13B?  
 17 A. Not that I can recall any specifics.  
 18 Q. Prior to delivering the check in payment of  
 19 application 13B Dore and Whittier did not notify  
 20 anybody from Kemper Surety that it was about to  
 21 deliver the check, did it?  
 22 A. No.  
 23 Q. And after the check was delivered Dore and  
 24 Whittier didn't tell Kemper Surety that it had  
 25 delivered the check, did it?

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1 A. No.  
 2 Q. Did Dore and Whittier tell the town, anybody  
 3 from the town that the check had been delivered?  
 4 A. The town I believe was aware that the checks  
 5 were being delivered when they wrote the checks.  
 6 Q. Well, the town delivered the checks to Mr.  
 7 Conway, right?  
 8 A. Correct.  
 9 Q. And what reason do you have to think that they  
 10 knew when the checks were going to be delivered to  
 11 Sciaba?  
 12 A. I don't recall specifically why they would  
 13 know when that would happen.  
 14 Q. Can you identify Exhibit 74, please?  
 15 A. Yes, this is an uncertified copy of  
 16 application No. 14.  
 17 Q. Did somebody from Dore and Whittier go over  
 18 the figures in application 14 with somebody from  
 19 Sciaba before it was received with a signature on  
 20 it?  
 21 A. I don't recall specifically that we did, if we  
 22 had reviewed the pencil requisition at that point or  
 23 not.  
 24 Q. Your usual practice would have been to review  
 25 the pencil requisition approximately May 25th for a

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1 during the month of May?  
 2 A. No, I don't specifically remember that  
 3 conversation.  
 4 Q. Are you saying you didn't say that or you just  
 5 don't recall?  
 6 A. I don't recall.  
 7 Q. Can you tell me as of June 1, 2003 -- let's  
 8 take a look in Exhibit 74 on page 10 of 24. It's  
 9 Bates numbered 25458, there's a section for gypsum  
 10 wallboard, do you see that?  
 11 A. Bates number again.  
 12 Q. It's Bates page 25458.  
 13 A. Yes.  
 14 Q. And there's a line item number 09250.05  
 15 exterior gypsum and sheathing?  
 16 A. Yes.  
 17 Q. From your own observation can you tell me what  
 18 portion of the exterior gypsum and sheathing had  
 19 been installed as of June 1, '03?  
 20 A. Not off the top of my head, no.  
 21 Q. Did you personally make any kind of inspection  
 22 with regard to the amount of exterior gypsum and  
 23 sheathing that had been installed?  
 24 A. I personally wouldn't have made any  
 25 observations on that.

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1 requisition covering the period --  
 2 A. Usually, yes.  
 3 Q. -- for the period ending June 1; is that  
 4 right?  
 5 A. Yes.  
 6 Q. You just don't remember if that happened?  
 7 A. Right. I would have to see if there was a  
 8 pencil document.  
 9 Q. Even though there's no signature by the  
 10 architect certifying these numbers did you,  
 11 nevertheless, go over them carefully and determine  
 12 whether Exhibit 74 accurately represented work that  
 13 had been accomplished since the last requisition  
 14 that was certified?  
 15 A. I don't believe that we did spend a great deal  
 16 of time on this. I think this was actually  
 17 forwarded to Mr. Anastasio.  
 18 Q. Did you have some conversations with Mr.  
 19 Anastasio about whether Dore and Whittier went along  
 20 with the figures in Exhibit 74?  
 21 A. I may have.  
 22 Q. Do you recall telling them that even though  
 23 you weren't officially going to certify the  
 24 requisition that you believed the figures shown  
 25 accurately represented what Sciaba had accomplished

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1 Q. You would rely on Chris Conway for that?  
 2 A. Correct.  
 3 MS. GRIFFIN: I'd like to mark as a  
 4 bundle -- let's mark this as the next  
 5 exhibit.  
 6 BY MS. GRIFFIN  
 7 Q. Can you identify Exhibit 75, please?  
 8 A. This is a direct payment claim from Millis  
 9 Plumbing.  
 10 Q. And Millis Plumbing was looking for direct  
 11 payment by the town of \$31,558.05?  
 12 A. Yes.  
 13 Q. And they were saying that they had not been  
 14 paid for amounts that they requisitioned through the  
 15 period ending March 20, 2003, right?  
 16 A. Correct.  
 17 Q. And was this the request for direct payment  
 18 that was being referenced in the memo that we talked  
 19 about earlier that was part of Exhibit 70?  
 20 A. Yes.  
 21 Q. You're not aware of Sciaba responding in  
 22 writing to the April 9 request for direct payment  
 23 from Millis Plumbing, are you?  
 24 A. No, I am not.  
 25 Q. The memo that was included in Exhibit 70

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1 regarding Millis' claim, it was prepared on May 6th,  
 2 2003, right?  
 3 A. That is the date on it.  
 4 Q. And that was -- the recommendation of Dore and  
 5 Whittier was to pay Millis Plumbing \$3,361.81,  
 6 right?  
 7 A. That was our recommendation.  
 8 Q. Now, as of May 6, 2003 did Dore and Whittier  
 9 make a determination that there were unsatisfactory  
 10 items of work that Millis Plumbing had performed?  
 11 A. I don't recall specifically.  
 12 Q. Did Dore and Whittier make a determination as  
 13 to whether the amount of Millis Plumbing's  
 14 subcontract that the town had not made payment for  
 15 as of May 6, 2003 was or was not sufficient to cover  
 16 the work that Millis Plumbing remained to perform?  
 17 A. Sorry, can you restate that?  
 18 Q. As of May 6, 2003 Millis had performed more  
 19 work than was being certified for Sciaba application  
 20 12, hadn't it?  
 21 A. This direct payment claim was for work through  
 22 March 20th, 2003. Our memo of May 6 was addressing  
 23 an application of payment for the period through  
 24 3/28/2003. I guess I don't follow.  
 25 MR. O'LEARY: Deb, before we go any

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1 further, I have 5:35. I think we're  
 2 actually six minutes past the limit and I  
 3 know Tom needs to get home.  
 4 MS. GRIFFIN: I kind of figured maybe  
 5 another four minutes.  
 6 MR. O'LEARY: Okay, we can go with your  
 7 calculation.  
 8 MS. GRIFFIN: We can finish on this and  
 9 then we're done.  
 10 BY MS. GRIFFIN  
 11 Q. Did Millis Plumbing perform additional work  
 12 during the month of April 2003?  
 13 A. I believe so. We can look at the requisition.  
 14 Q. We can tell that by looking at Exhibit 72,  
 15 right?  
 16 A. There's listing for the period of Exhibit 72  
 17 that were showing a requisition amount of \$29,484.  
 18 Q. Of additional work that Millis Plumbing  
 19 performed during the month of April, right?  
 20 A. Through 5/1/2003.  
 21 Q. And you're getting that from Exhibit 72 page  
 22 NBDW 27035 line 15400.900, right?  
 23 A. Yes.  
 24 Q. So my question to you is looking at that  
 25 figure at the time that Dore and Whittier was making

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1 a recommendation to the town on how much to pay  
 2 Millis Plumbing --  
 3 A. For the requisition in Exhibit 70, correct?  
 4 Q. -- Millis for the direct payment amount that  
 5 was requested in Exhibit 75, the request for direct  
 6 payment?  
 7 A. Yes, this direct payment is through work  
 8 provided through March 20th which would be  
 9 representative of this requisition Exhibit No. 70  
 10 for work through 3/28.  
 11 Q. I understand that's how you approached your  
 12 comments on Exhibit 75 but what I'm trying to find  
 13 out is by the time you were making your  
 14 recommendation Millis Plumbing had, in fact,  
 15 performed at least another \$29,000 worth of work  
 16 beyond what you had certified in application 12,  
 17 right?  
 18 A. Yes.  
 19 Q. So as of the time you were making your  
 20 recommendation did Dore and Whittier make a  
 21 determination as to whether the then earned -- the  
 22 then balance of Millis Plumbing's subcontract that  
 23 hadn't been paid to it or to Sciaba was or was not  
 24 sufficient to cover the work that it remained to do  
 25 as of May 6?

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1 A. I'm sorry, can you go through that question  
 2 again?  
 3 Q. As of May 6 what was the dollar value of the  
 4 work that remained for Millis to perform?  
 5 A. I guess I'm not -- I mean the memo is dated  
 6 May 6. That was the date on the memo but it is in  
 7 reference --  
 8 Q. I'm not asking you that. I'm asking you as of  
 9 May 6 what was the dollar value of the work that  
 10 then remained to be performed by Millis Plumbing and  
 11 can you figure that out by taking the scheduled  
 12 value and subtracting the figures for work completed  
 13 and both in previous applications and the this  
 14 period column in Exhibit 72, the May 1 application?  
 15 A. For May 6 you could take the balance in  
 16 15400.9 column H balance to finish in addition to  
 17 column E, the 29,484 that hadn't been certified yet  
 18 at that point as the balance of work to finish.  
 19 Q. The 29,484 had been performed, right?  
 20 A. Yes.  
 21 Q. So you wouldn't need to add it because it had  
 22 already been performed?  
 23 A. Correct.  
 24 Q. Now, did you make a determination that the  
 25 \$519,000 was enough to cover the cost of the work

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1 that Millis Plumbing had not yet performed as of May  
2 6, 2003?

3 A. One more time, sorry.

4 Q. Did you make a determination whether on May 6,  
5 2003 \$519,000 and change was enough to cover the  
6 work that Millis Plumbing had yet to perform?

7 A. I don't recall specifically we made a  
8 determination at that point.

9 Q. Not one way or the other?

10 A. One way or another.

11 MR. O'LEARY: I think I'm going to pull  
12 the plug, Deb.

13 MS. GRIFFIN: That's fine. I think  
14 that's it. Thank you.

15 MR. O'LEARY: Thank you.

16 (Whereupon, the deposition was  
17 adjourned at 5:43 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25

Page 200

# 1 CERTIFICATE

2  
3 I, Virginia L. Simmer, Registered Professional  
4 Reporter, certify:

5 That the foregoing proceedings were  
6 reported stenographically by me at the time  
7 and place herein set forth;

8 That the foregoing is a true and  
9 correct transcript of my shorthand notes so  
10 taken;

11 That the witness was sworn by me as  
12 a Notary Public for the State of Vermont;

13 That I am not a relative or employee  
14 of any attorney of the parties nor  
15 financially interested in the action.

16 The certification of this transcript does not apply  
17 to any reproduction of the same by any means unless  
18 under the direct control and/or direction of the  
19 certifying reporter.  
20  
21

22 \_\_\_\_\_  
23 Virginia L. Simmer

24 My Commission expires February 10, 2007.  
25

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1 I have carefully read the foregoing  
2 deposition and the answers made by me are  
3 true.  
4  
5

6 \_\_\_\_\_  
7 LEE P. DORE  
8  
9  
10

11 STATE OF \_\_\_\_\_  
12 COUNTY OF \_\_\_\_\_  
13

14 At \_\_\_\_\_ in said  
15 County, this \_\_\_\_\_ day of \_\_\_\_\_,  
16 200\_, personally appeared the above-named  
17 LEE P. DORE, and made oath that  
18 the foregoing answers, subscribed by  
19 LEE P. DORE, are true.

20 Before me,  
21  
22

23 \_\_\_\_\_  
24 Notary Public  
25 My commission expires:

51 (Pages 198 to 200)

## **EXHIBIT C**

**KOPELMAN AND PAIGE, P. C.**

ATTORNEYS AT LAW

31 ST. JAMES AVENUE

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MARY L. GIORGIO  
DARREN R. KLEIN  
THOMAS W. MCENANEY  
JONATHAN M. SILVERSTEIN  
KATHARINE GOREE DOYLE  
GEORGE X. PUCCI  
LAUREN F. GOLDBERG  
JASON R. TALERMAN  
MICHELE E. RANDAZZO  
GREGG J. CORBO  
RICHARD T. HOLLAND  
LISA C. ADAMS  
ELIZABETH R. CORBO  
MARCELINO LA BELLA  
VICKI S. MARSH  
JOHN J. GOLDBERSON  
SHIRIN EVERETT  
BRIAN E. GLENNON, II  
JONATHAN D. EICHMAN  
TODD A. FRAMPTON  
CAROLYN M. MURRAY  
JACKIE A. COWIN

May 7, 2003

Mr. Michael D. Rogers  
President  
Millis Plumbing Co., Inc.  
220 Norfolk Street  
Walpole, MA 02081

Re: North Brookfield Jr./Sr. High School Project, North Brookfield, MA;  
Demand for Direct Payment: Plumbing Subtrade Work

Dear Mr. Rogers:

Please be advised that this firm serves as Town Counsel to the Town of North Brookfield, Massachusetts. I am in receipt of your April 9, 2003 demand for direct payment. A copy of the demand letter is attached hereto for your review and convenience. No reply was received from the general contractor, E.J. Sciaba Contracting, Inc. Based upon the information available to the Town, the amount eligible for direct payment is computed as follows:

Plumbing subtrade work certified for payment prior to date of demand .....	\$62,078.10
Change Order work certified for payment prior to date of demand .....	\$ -0-
	\$62,078.10
Less payments made to you by the general contractor, Sciaba .....	\$ 55,612.38
	\$ 6,465.72
Less Retainage .....	\$ 3,103.91
Direct Payment Amount .....	\$ 3,361.81

KOPELMAN AND PAIGE, P.C.

Mr. Michael D. Rogers

President

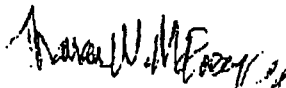
May 7, 2003

Page 2

As set forth above, the amount eligible for direct payment is \$3,361.81. This payment shall be charged against the next requisition submitted by E.J. Sciaba Contracting, Inc., and paid by the Town from any amounts which may become payable to E.J. Sciaba Contracting, Inc. in accordance with the priority rules established by G.L. c. 30, §39F.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

  
Thomas W. McEnaney

TWM/rif

Enc.

cc: Board of Selectmen  
School Building Committee  
Mr. Lee Dore  
E.J. Sciaba Contracting, Inc.

188904/NBRO/0001

## **EXHIBIT D**



James Murray

04/29/2005

Volume: I  
Pages: 1-153  
Exhibits: 76-99

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

-----X  
AMERICAN MANUFACTURERS MUTUAL  
INSURANCE COMPANY,

Plaintiff,

vs.

C.A. NO. 03-40266 CBS

TOWN OF NORTH BROOKFIELD,  
Defendant.

-----X  
30(b)(6) DEPOSITION OF THE TOWN OF NORTH BROOKFIELD

By its designee JAMES MURRAY

Friday, April 29, 2005

9:00 a.m.

HOLLAND & KNIGHT LLP

10 St. James Avenue

Boston, Massachusetts 02116

Reporter: Karen D. Quigley, RPR/RMR

James Murray

04/29/2005

Page 2

Page 4

## 1 A P P E A R A N C E S :

2  
3 HOLLAND & KNIGHT LLP  
4 (By Deborah S. Griffin, Esquire)  
5 10 St. James Avenue  
6 Boston, Massachusetts 02116  
7 617-523-2700  
8 For the Plaintiff  
9  
10 KOPELMAN AND PAIGE, P.C.  
11 (By Thomas M. McEnaney, Esquire)  
12 31 St. James Avenue, 7th Floor  
13 Boston, Massachusetts 02116  
14 617-556-0007  
15 For the Defendant  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 NO. PAGE  
2 88 Letter dated 7-23-03 to Deborah  
3 Griffin from Thomas McEnaney 117  
4 89 Meeting Notes dated 9-10-03 119  
5 90 Check dated 5-20-03 for \$252,844.47  
6 to E.J. Sciaba 128  
7 91 Check dated 5-20-03 for 443,733.76  
8 to E.J. Sciaba 128  
9 92 Letter dated 11-12-03 to Thomas  
10 McEnaney from Deborah Griffin 139  
11 93 Letter dated 11-12-03 to Deborah  
12 Griffin from Thomas McEnaney 141  
13 94 Letter dated 11-12-03 to Thomas  
14 McEnaney from Deborah Griffin 144  
15 95 Letter dated 11-21-03 to Thomas  
16 McEnaney from Deborah Griffin 144  
17 96 Completion Contract 145  
18 97 Performance Bond 145  
19 98 Letter dated 12-15-03 to Chris Fontaine  
20 from James Caldwell 145  
21 99 Meeting Notes dated 12-17-03 146  
22  
23 Afternoon Session 88  
24 \*\*\*Original exhibits retained by Ms. Griffin.

Page 3

Page 5

## 1 I N D E X

2  
3 DEPOSITION OF: PAGE  
4 JAMES MURRAY  
5 BY MS. GRIFFIN 5  
6  
7 -----

## 8 E X H I B I T S

9 NO. PAGE  
10 76 Notice of Deposition 11  
11 77 General Conditions of the contract 53  
12 78 Project Manual Volume 1 of 2 53  
13 79 Addendum No. 2 53  
14 80 Minutes dated 11-6-02 66  
15 81 Minutes dated 11-20 67  
16 82 Minutes dated 11-20-02 70  
17 83 Minutes dated 2-5-03 79  
18 84 Minutes dated 2-26-03 82  
19 85 Letter dated 4-23-03 from Robert  
20 O'Neill to Edward Sciaba 111  
21 86 Memo dated 5-15-03 to Robert  
22 O'Neill from Ed O'Malley 111  
23 87 Letter dated 7-2-03 to Deborah  
24 Griffin from Thomas McEnaney 117

## 1 P R O C E E D I N G S

2  
3 JAMES MURRAY,  
4 a witness called for examination by counsel for the  
5 Plaintiff, having been satisfactorily identified by the  
6 production of his driver's license and duly sworn, was  
7 examined and testified as follows:  
8

9 MS. GRIFFIN: The parties have  
10 stipulated that the witness may read and sign the  
11 deposition but it need not be before a notary, and that's  
12 the only stipulation.  
13

## 14 D I R E C T E X A M I N A T I O N

15 BY MS. GRIFFIN:

16 Q. Would you state your full name please.  
17 A. James William Murray.  
18 Q. Where do you live?  
19 A. 46 Lakeview Road, North Brookfield, Mass.  
20 Q. What do you do for work?  
21 A. Civil engineer.  
22 Q. By whom are you employed?  
23 A. ET&L Corp.  
24 Q. Where are they located?

2 (Pages 2 to 5)

James Murray

04/29/2005

Page 6

1 A. Stow, Mass.  
 2 Q. And what type of work do they do?  
 3 A. Highway and bridge construction and site  
 4 development.  
 5 Q. What's your position with ET&L?  
 6 A. Professional engineer and project manager.  
 7 Q. Do you hold any registrations or licenses?  
 8 A. Yes, registered professional engineer.  
 9 Q. And would you -- how long have you been  
 10 with ET&L?  
 11 A. About four years.  
 12 Q. Could you give your employment history  
 13 before that time?  
 14 A. Prior to ET&L I was with McManus  
 15 Excavating about five years. Prior to that I was with  
 16 the Mass. Highway Department for about six years. How  
 17 far back do we want to go?  
 18 Q. All the way back to college.  
 19 A. All the way back to college. Can I go the  
 20 other way?  
 21 Q. Sure.  
 22 A. Well, I graduated from college in 1980. I  
 23 went to work for -- let me see -- Daniel O'Connell and  
 24 Sons out of Holyoke. I would say that was roughly four

Page 7

1 years. Then I went to work for Gutierrez Construction  
 2 Company out of Burlington, Mass. was probably five years  
 3 and then Mass. Highway and so on.  
 4 Q. Where did you go to college?  
 5 A. Worcester Polytechnic Institute.  
 6 Q. And what degree did you earn there?  
 7 A. Civil engineer, bachelor of science.  
 8 Q. Did you have any formal post-graduate  
 9 education?  
 10 A. No.  
 11 Q. When did you become a registered  
 12 professional engineer?  
 13 A. 1995.  
 14 Q. When you were working for Daniel O'Connell  
 15 and Sons, what was your job?  
 16 A. Assistant superintendent of construction.  
 17 Q. What type of construction projects did you  
 18 work on with Daniel O'Connell and Sons?  
 19 A. Building construction.  
 20 Q. When you were with Gutierrez, what was your  
 21 position?  
 22 A. Superintendent of construction.  
 23 Q. What type of construction projects did you  
 24 work on there?

Page 8

1 A. Building construction.  
 2 Q. And with Mass. Highway what was your  
 3 position?  
 4 A. Resident engineer.  
 5 Q. Did you work on roads and bridges, a whole  
 6 array of jobs that Mass. Highway does?  
 7 A. Yes.  
 8 Q. What was your position with McManus  
 9 Excavating?  
 10 A. Project manager and estimator.  
 11 Q. What type of projects did you work on  
 12 there?  
 13 A. Mainly site development for commercial  
 14 projects and subdivisions, residential subdivisions.  
 15 Q. Have you done any teaching, speaking or  
 16 writing in your capacity as a registered professional  
 17 engineer?  
 18 A. No. Well, as far as writing I mean I've  
 19 written numerous letters.  
 20 Q. For publication?  
 21 A. No.  
 22 Q. Do you currently hold a position with the  
 23 town of North Brookfield?  
 24 A. Employed?

Page 9

1 Q. Any kind of position, volunteer or  
 2 otherwise?  
 3 A. I'm a volunteer, co-chairman of the school  
 4 building committee.  
 5 Q. Do you hold any other positions with the  
 6 town?  
 7 A. No.  
 8 Q. How long have you served as co-chair of  
 9 the school building committee?  
 10 A. Best of my knowledge I would it's probably  
 11 four years.  
 12 Q. Going back to 2001?  
 13 A. Best of my knowledge. I don't know the  
 14 exact date.  
 15 Q. Can you recall what stage of planning the  
 16 junior/senior high school was in when you became co-chair  
 17 of the school building committee?  
 18 A. There was no stage of planning. The  
 19 building committee was formed to pursue the design and  
 20 construction of the school.  
 21 Q. So your tenure as co-chair coincided with  
 22 the entire life of the committee?  
 23 A. No, it didn't.  
 24 Q. Did the committee exist before you came on

3 (Pages 6 to 9)

James Murray

04/29/2005

Page 10

1 the committee?  
 2 A. No, but I wasn't co-chair.  
 3 Q. Okay. So you've been on the committee as  
 4 long as the committee's been in existence?  
 5 A. Correct.  
 6 Q. When did you become co-chair?  
 7 A. Exact date I couldn't tell you but  
 8 approximately six months after the committee was formed.  
 9 Q. And when was the committee formed?  
 10 A. I don't know the exact date.  
 11 Q. Do you remember the year?  
 12 A. I would say it's 2000 but I'm not  
 13 positive.  
 14 Q. What have been your responsibilities as a  
 15 member of the school building committee?  
 16 A. I'm not sure I understand the question.  
 17 Q. What have you had to do in your role as a  
 18 committee member?  
 19 A. As a co-chair I run the committee  
 20 meetings. I mean if you're asking what the committee is  
 21 in charge of as a whole, I could better explain that.  
 22 Q. Okay. What is the purpose of the school  
 23 building committee?  
 24 A. The purpose of the committee was to

Page 11

1 oversee the selection process of an architect and to  
 2 oversee the construction of the new school.  
 3 MS. GRIFFIN: Let's mark this as the  
 4 next exhibit. We're going to continue numbering from  
 5 where we left off the last time so this will be No. 76.  
 6 (Document marked for identification  
 7 as Exhibit No. 76.)  
 8 BY MS. GRIFFIN:  
 9 Q. Would you take a look at the document  
 10 that's been marked as Exhibit 76, please. Have you seen  
 11 Exhibit 76 before?  
 12 A. You have to give me a minute to review it.  
 13 (Pause.)  
 14 A. Yes.  
 15 Q. And have you been designated by the town  
 16 of North Brookfield to be a witness for the town at  
 17 today's deposition with respect to some of the topics  
 18 listed on beginning on page five in Exhibit 76?  
 19 A. I have been deemed the most knowledgeable  
 20 on the majority of these items.  
 21 Q. And has the town designated you to come  
 22 testify about those items?  
 23 MR. McENANEY: If you understand, you  
 24 can answer the question. Do you understand what she

Page 12

1 says?  
 2 A. I really don't understand when you say the  
 3 town. The town's Selectmen or...  
 4 Q. Well, if you look at the first page of the  
 5 exhibit, it says the deponent which is the town shall  
 6 designate one or more persons most knowledgeable to  
 7 testify, and what I'm trying to find out is if you're the  
 8 person that's been designated?  
 9 A. I would say yes.  
 10 Q. And are there some topics on the list in  
 11 Exhibit 76 that you have not been designated for?  
 12 A. Yes.  
 13 Q. Which topics have you not been designated  
 14 for?  
 15 (Pause.)  
 16 A. Item 14, item 12, item 13, partially on  
 17 item three. That's it.  
 18 Q. Okay. What part of item three have you  
 19 not been designated on?  
 20 A. I don't make the payments to Sciaba.  
 21 Q. Who does make the payments?  
 22 A. I don't know.  
 23 Q. All right. Did you finish your list of  
 24 the topics that you have not been designated for?

Page 13

1 A. Yes.  
 2 Q. I'm going to show you a document that was  
 3 marked previously as Exhibit 5. Would you take a look at  
 4 that please.  
 5 (Pause.)  
 6 Q. Have you seen Exhibit 5 before?  
 7 A. No, I haven't.  
 8 Q. Along the top of each page of Exhibit 5  
 9 but inside the chart there's some years above the listing  
 10 of the months. Do you see that?  
 11 A. Yes.  
 12 Q. And on the first page there's a reference  
 13 to 2000 and 2001.  
 14 A. Yes.  
 15 Q. And then on the second page of the  
 16 document the years jump to 2006, 2007 and under the  
 17 columns where it says 2006, 2007 there's a row that says  
 18 bidding; do you see that?  
 19 A. Yes.  
 20 Q. Was there a time in the planning of the  
 21 junior/senior high school project when it was anticipated  
 22 that the design work would be done and then the project  
 23 would pause and bidding would not take place until 2006?  
 24 A. No.

4 (Pages 10 to 13)

James Murray

04/29/2005

<p style="text-align: right;">Page 30</p> <p>1 contract between Dore and Whittier and the town covering</p> <p>2 construction management services; correct?</p> <p>3 A. Yes, it is.</p> <p>4 Q. Who negotiated the construction management</p> <p>5 services agreement that's been marked Exhibit 7?</p> <p>6 A. The building committee.</p> <p>7 Q. And who particularly on the building</p> <p>8 committee conducted those negotiations?</p> <p>9 A. The entire committee.</p> <p>10 Q. The negotiations took place in formal</p> <p>11 school building committee meetings?</p> <p>12 A. Yes.</p> <p>13 Q. There were no discussions outside of</p> <p>14 meetings with Dore and Whittier about the terms of this</p> <p>15 agreement?</p> <p>16 A. Not with the building committee.</p> <p>17 Q. Were there discussions outside of building</p> <p>18 committee meetings with Dore and Whittier in which the</p> <p>19 terms of Exhibit 7 were negotiated by less than the full</p> <p>20 committee?</p> <p>21 MR. McENANEY: Objection. You can</p> <p>22 answer the question.</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Did the school building committee have</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. The page of Exhibit 7 that is numbered</p> <p>2 34664, would you take a look at that please.</p> <p>3 (Pause.)</p> <p>4 Q. Do you see item Roman numeral number five</p> <p>5 construction manager \$105?</p> <p>6 A. Yes.</p> <p>7 Q. That was the hourly rate that was to be</p> <p>8 charged if there were hourly charges for the construction</p> <p>9 manager's time; correct?</p> <p>10 A. Correct.</p> <p>11 Q. Exhibit 7, the construction management</p> <p>12 services contract, appears to have been signed on May 1,</p> <p>13 2002. Do you see that?</p> <p>14 A. Correct.</p> <p>15 Q. And that's the date next to John Dore's</p> <p>16 signature; right?</p> <p>17 A. Correct.</p> <p>18 Q. Can you tell me when it was signed by the</p> <p>19 town?</p> <p>20 A. I cannot answer that.</p> <p>21 Q. The addendum which is the last page of</p> <p>22 Exhibit 7 has a May 24, 2002 date. Can you explain why</p> <p>23 that page has that date on it?</p> <p>24 A. No, I can't.</p>
<p style="text-align: right;">Page 31</p> <p>1 counsel involved in the negotiation of the construction</p> <p>2 management services agreement with Dore and Whittier?</p> <p>3 MR. McENANEY: Objection. You can</p> <p>4 answer yes or no to that question.</p> <p>5 A. Yes.</p> <p>6 Q. Who was that counsel?</p> <p>7 MR. McENANEY: Objection. You can give</p> <p>8 the name but that's it.</p> <p>9 THE WITNESS: I have a question.</p> <p>10 MR. McENANEY: She asked you the name</p> <p>11 of whoever the attorney was or the law firm that</p> <p>12 represented you, and you can give that but nothing</p> <p>13 further regarding any discussions that you may have had.</p> <p>14 A. I recall two counsels reviewed the</p> <p>15 contract.</p> <p>16 Q. And who were they?</p> <p>17 A. Kopelman and Paige and I don't recall the</p> <p>18 name of the school committee's counsel.</p> <p>19 Q. Was there a particular attorney at</p> <p>20 Kopelman and Paige that reviewed the architect's</p> <p>21 contract, the construction management services part of</p> <p>22 it?</p> <p>23 A. I can't answer that question. I don't</p> <p>24 know.</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. The paragraph two on that page says, "If</p> <p>2 the construction period extends beyond December 31, 2003</p> <p>3 through no fault of the owner, it is the owner's intent</p> <p>4 to have any additional construction management costs paid</p> <p>5 out of liquidated damages," et cetera, I won't read the</p> <p>6 whole thing. Was that language the subject of discussion</p> <p>7 in the school building committee meeting?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you have any information about how that</p> <p>10 language came to be part of the contract?</p> <p>11 A. To the best of my knowledge it was under</p> <p>12 the recommendation of counsel.</p> <p>13 Q. And how did the date of December 31, 2003</p> <p>14 come to be selected as the date that appears in that</p> <p>15 paragraph?</p> <p>16 A. I believe that's the completion date of</p> <p>17 the school project as bid at the time.</p> <p>18 Q. I'm going to show you the document that's</p> <p>19 been marked as Exhibit 22. Would you take a look at that</p> <p>20 please, and in particular if could you turn to the second</p> <p>21 page of Exhibit 22.</p> <p>22 Exhibit 22 is the contract between E.J.</p> <p>23 Sciaba Contracting and the town for this project; right?</p> <p>24 A. Correct.</p>



James Murray

04/29/2005

Page 50

1 A. Correct.  
 2 Q. All right. And what did you discuss with  
 3 Mr. Hasenfus?  
 4 A. I discussed his recollection of the I  
 5 believe it was the May meeting with the surety.  
 6 Q. Anything else you discussed with  
 7 Mr. Hasenfus?  
 8 A. No.  
 9 Q. What did you discuss with Mr. O'Neill?  
 10 A. I asked Mr. O'Neill if he could send me  
 11 the copies of the minutes of the May meeting with the  
 12 surety.  
 13 Q. All right. Did you discuss anything else  
 14 with Mr. O'Neill to prepare for today's deposition?  
 15 A. No.  
 16 Q. Did you talk to any members of the school  
 17 building committee to prepare for today's meeting?  
 18 A. No.  
 19 Q. In Exhibit 67 which is the invoice, would  
 20 you turn to invoice No. 36 please. This is an invoice  
 21 that covers the period June 26 to July 25, '03; right?  
 22 A. Yes.  
 23 Q. And on this invoice No. 36 the town was  
 24 billed for 14 hours of the project manager's time and 151

Page 51

1 hours of the construction manager's time; right?  
 2 A. Yes.  
 3 Q. And did you see that the total charge for  
 4 the construction manager's time was \$16,610?  
 5 A. Yes.  
 6 Q. Did the town request any information from  
 7 Dore and Whittier about what the construction manager did  
 8 for 151 hours?  
 9 A. Not that I'm aware of.  
 10 Q. Did the town request any information about  
 11 what the project manager did for 14 hours during the  
 12 period covered by invoice 36?  
 13 A. Not that I recall.  
 14 Q. Did the town ever receive copies of time  
 15 cards or time records showing what activities Dore and  
 16 Whittier was billing the town for on a time-card basis?  
 17 A. I don't know if the town did. The  
 18 building committee did not receive actual time cards, but  
 19 it was discussed at building committee meetings the hours  
 20 charged.  
 21 Q. Was there a discussion of invoice 36 --  
 22 strike that. Was there a discussion at a school building  
 23 committee meeting of the time spent by Chris Conway  
 24 during the period June 26 to July 25, '03?

Page 52

1 A. I don't recall.  
 2 Q. Did the town ever question why the charges  
 3 for the construction manager's time while the project was  
 4 shut down for the period June 26 to July 25, '03 were  
 5 higher than when construction was going on?  
 6 A. Could you ask that again?  
 7 Q. We talked earlier about the fact that the  
 8 monthly charge while construction was ongoing for  
 9 construction management services by Chris Conway was  
 10 \$11,325; right?  
 11 A. Yes.  
 12 Q. And in invoice 36 the town was billed  
 13 \$16,610 for Mr. Conway's time; right?  
 14 A. Yes.  
 15 Q. And that's higher than the monthly charge  
 16 the town received when construction was underway;  
 17 correct?  
 18 A. Correct.  
 19 Q. Did the town ever question why it should  
 20 be being billed more when the job was shut down than it  
 21 was paying for construction, the construction manager's  
 22 time when construction was ongoing?  
 23 A. No.  
 24 Q. And for months after the one that we were

Page 53

1 just looking at in invoice 36 is your answer the same,  
 2 the town did not question why charges during any of those  
 3 months were higher than the charges when construction  
 4 were ongoing?  
 5 A. That would be the same answer, yes.  
 6 MS. GRIFFIN: Let's go off the record  
 7 for a minute.  
 8 (Off the record from 10:43 until  
 9 10:50 a.m.)  
 10 (Documents marked for identification  
 11 as Exhibit Nos. 77 through 79.)  
 12 BY MS. GRIFFIN:  
 13 Q. I've put before you, Mr. Murray, documents  
 14 that have been marked Exhibits 77, 78 and 79. Could you  
 15 look at Exhibit 77 and confirm that Exhibit 77 is a copy  
 16 of the general conditions of the contract that were part  
 17 of the contract between the town and Sciaba?  
 18 A. I believe they are.  
 19 Q. Can you go to Exhibit 78 and confirm that  
 20 Exhibit 78 is a copy of the first volume of the project  
 21 manual that was part of Sciaba's contract with the town?  
 22 A. Yes, it is.  
 23 Q. Can you take a look at Exhibit 79 and  
 24 confirm that Exhibit 79 is a copy of Addendum No. 2 that

14 (Pages 50 to 53)



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1 Q. And therefore took no steps; correct?

2 A. Correct.

3 Q. Let me show you the document that was

4 marked previously as Exhibit 59.

5 (Pause.)

6 Q. Have you seen Exhibit 59 before?

7 A. Yes, I have.

8 Q. Did you see it shortly after November 5,

9 2003?

10 A. Yes.

11 Q. When you received your copy of Exhibit 59,

12 did you understand that the surety's claim regarding

13 overpayment was now at over a million dollars?

14 A. Yes.

15 Q. Did the school building committee discuss

16 the November 5th letter at any of its meetings?

17 A. I'm sure I mentioned the letter. I don't

18 think there was much discussion on it.

19 Q. Between the time you received your copy of

20 the November 5th letter, Exhibit 59, and the time the

21 completion contract with Fontaine was signed, did the

22 town take any steps to arrange for additional funding in

23 the event the surety's overpayment claim was successful?

24 A. No.

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1 Q. Do you recall that in December 2003 the

2 surety sent some checks to the town in connection with

3 the tender of Fontaine as the completion contractor?

4 A. Yes.

5 Q. Did you ever see those checks yourself?

6 A. No.

7 Q. Where did they go, do you know?

8 A. I believe they went to the town treasurer,

9 but I'm not positive.

10 Q. Did -- do you know whether the checks that

11 the surety sent to the town in connection with the tender

12 of Fontaine were deposited by the town and used?

13 A. I can only assume so.

14 Q. Who would know that?

15 A. Town accountant.

16 Q. Who's that?

17 A. Nancy Nikiel, N-I-K-E-I-L.

18 MR. McENANEY: I believe it's I-E-L.

19 Q. Is she a town employee?

20 MR. McENANEY: Yes.

21 Q. I'm going to show you the document that

22 was marked previously as Exhibit 71 -- strike that. I'm

23 going to show you the document that was marked previously

24 as Exhibit 70 and also 72.

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1 (Documents marked for identification

2 as Exhibit Nos. 90 and 91.)

3 BY MS. GRIFFIN:

4 Q. Have you seen Exhibit 90 before or any

5 part of it?

6 A. 90, no, I have not.

7 Q. Can you identify the check, at least the

8 front of the check at the top of Exhibit 90, as a check

9 that the town of North Brookfield cut in favor of E.J.

10 Sciaba Contracting Company?

11 A. That's what it is, yes.

12 Q. And is exhibit, the check shown in Exhibit

13 90 the check that was delivered in payment of application

14 No. 12 which was Exhibit 70?

15 A. I can't answer that question.

16 Q. Why is it you can't answer that question?

17 A. It appears to me Exhibit 90 and Exhibit 70

18 have two different amounts on them.

19 Q. Do you see at the bottom of Exhibit 70

20 where it says recommend providing separate checks to

21 Millis and Greenwood, see attached memo?

22 A. Yes.

23 Q. And on the second page of Exhibit 70 it's

24 got the -- strike that. On the third page of Exhibit 70

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1 it's got the dollar amounts of the direct payment claims

2 that Dore and Whittier was recommending be paid; correct?

3 A. Correct.

4 Q. Those two direct payment claims total

5 between 34 and \$35,000; right?

6 A. Correct.

7 Q. And does that dollar amount account for

8 the difference between the amount payable on application

9 No. 12 and the amount of the check in Exhibit 90?

10 A. Without doing the exact math it appears

11 that way, yes.

12 Q. So having looked at that can you now

13 confirm that the check that's shown in Exhibit 90 is the

14 check that the town delivered to Sciaba in payment of

15 application 12?

16 A. Since I didn't write the check I can only

17 assume that is correct.

18 Q. You don't have any reason to believe

19 otherwise; right?

20 A. No.

21 Q. Was my statement correct?

22 A. Correct.

23 Q. Exhibit 91 was the check that the town

24 prepared to Sciaba in payment of application 13B, Exhibit

33 (Pages 126 to 129)

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1 70; correct?  
 2 A. It appears to be.  
 3 Q. Now did the town deliver these two checks  
 4 in Exhibits 90 and 91 to Dore and Whittier for delivery  
 5 to Sciaba?  
 6 A. My recollection was that at least one of  
 7 these checks was hand delivered to Sciaba after the May  
 8 21st meeting.  
 9 Q. And where did you get that understanding?  
 10 A. Mr. O'Neill.  
 11 Q. Did he say who delivered the check?  
 12 A. No, he did not.  
 13 Q. At the time -- strike that. Did  
 14 Mr. O'Neill say who delivered -- strike that. Was  
 15 whoever delivered the check to Sciaba authorized by the  
 16 school building committee to deliver the check?  
 17 A. No.  
 18 Q. I'm sorry?  
 19 A. No.  
 20 Q. You don't know who it was who delivered  
 21 the check?  
 22 A. No, I don't.  
 23 Q. Is it your testimony that the person who  
 24 delivered the check to Sciaba was not authorized to

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1 deliver the check?  
 2 A. I guess I need to know what authorized  
 3 means.  
 4 Q. When was it that Mr. O'Neill told you the  
 5 check was delivered after the meeting?  
 6 A. I don't recall the exact date, but it was  
 7 sometime after that May 21st meeting.  
 8 Q. Approximately how long after?  
 9 A. To the best of my recollection was a few  
 10 days.  
 11 Q. When you learned from Mr. O'Neill that a  
 12 check had been delivered after the meeting, did you  
 13 express dismay to him that that shouldn't have been done?  
 14 A. No.  
 15 Q. Did you think that it shouldn't have been  
 16 done?  
 17 A. No.  
 18 Q. So as far as you were concerned it was  
 19 okay that the check had been delivered?  
 20 A. Correct.  
 21 Q. At the time the check was delivered to  
 22 Sciaba -- the check you're talking about is Exhibit 90,  
 23 right, the one that was delivered right after the  
 24 meeting?

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1 A. I believe it was the first one.  
 2 Q. Okay. That was the May 20th -- well, both  
 3 checks are dated May 20; correct?  
 4 A. Yes, they are.  
 5 Q. Okay. So it was at the time that Exhibit  
 6 90, the \$252,000 check was delivered to Sciaba, you  
 7 already knew and believed that the project was 14 months  
 8 late; right?  
 9 A. Correct.  
 10 Q. And you already knew that the retainage  
 11 that the town was holding was not enough to cover  
 12 liquidated damages; correct?  
 13 MR. McENANEY: Objection. You can  
 14 answer.  
 15 A. Well, we could only make an assumption.  
 16 Q. But that's what you believed; right?  
 17 A. Based on a projected schedule.  
 18 Q. Before the check was delivered to Sciaba,  
 19 the Exhibit 90, the \$252,000 check was delivered to  
 20 Sciaba, did the town take any action to determine what  
 21 claims the town had against Sciaba?  
 22 A. I don't understand the question.  
 23 Q. Did the town or any town official or town  
 24 committee members ask themselves do we have any claims

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1 against Sciaba that should -- do we have any claims  
 2 against Sciaba?  
 3 A. Claims? I'm not sure what you mean by  
 4 claims.  
 5 Q. Did anybody on behalf of the town ask Dore  
 6 and Whittier whether there was a basis to reduce the  
 7 amount that they had previously approved on application  
 8 No. 12?  
 9 A. Could you repeat that please.  
 10 Q. Well, Dore and Whittier had signed off on  
 11 application No. 12 sometime in April; correct?  
 12 A. That's correct.  
 13 Q. And between the time the architect signed  
 14 off on application 12 and the time the check was  
 15 delivered, at least three or four weeks had passed,  
 16 hadn't they?  
 17 A. Yes.  
 18 Q. Between the time the architect signed off  
 19 on application 12 and the time the check for that  
 20 application was delivered to Sciaba, did anyone ask Dore  
 21 and Whittier whether they still considered the  
 22 certification to be applicable?  
 23 A. No.  
 24 Q. Between the time the architect initially

34 (Pages 130 to 133)